

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Fredrick E. Clement
Bankruptcy Judge

Bakersfield Federal Courthouse
510 19th Street, Second Floor
Bakersfield, California

WEDNESDAY

JULY 23, 2014

PRE-HEARING DISPOSITIONS

GENERAL DESIGNATIONS

Each pre-hearing disposition is prefaced by the words "Final Ruling," "Tentative Ruling" or "No Tentative Ruling." Except as indicated below, matters designated "Final Ruling" will not be called and counsel need not appear at the hearing on such matters. Matters designated "Tentative Ruling" or "No Tentative Ruling" will be called.

MATTERS RESOLVED BEFORE HEARING

If the court has issued a final ruling on a matter and the parties directly affected by a matter have resolved the matter by stipulation or withdrawal of the motion before the hearing, then the moving party shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter to be dropped from calendar notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860.

ERRORS IN FINAL RULINGS

If a party believes that a final ruling contains an error that would, if reflected in the order or judgment, warrant a motion under Federal Rule of Civil Procedure 52(b), 59(e) or 60, as incorporated by Federal Rules of Bankruptcy Procedure, 7052, 9023 and 9024, then the party affected by such error shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter either to be called or dropped from calendar, as appropriate, notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860. Absent such a timely request, a matter designated "Final Ruling" will not be called.

9:00 a.m.

1. [11-16602](#)-A-13 BRENDA THOMAS MOTION TO MODIFY PLAN
RSW-1 6-11-14 [[45](#)]
BRENDA THOMAS/MV
ROBERT WILLIAMS/Atty. for dbt.

Final Ruling

Motion: Confirm Modified Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by Chapter 13 trustee, approved by debtor's counsel

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 3015-1(d)(2), 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve modification of the plan.

2. [09-12804](#)-A-13 DANIEL/DONNA NELSON MOTION FOR COMPENSATION FOR
LKW-4 LEONARD K. WELSH, DEBTOR'S
ATTORNEY(S)
6-9-14 [[87](#)]
LEONARD WELSH/Atty. for dbt.

Tentative Ruling

Application: Final Compensation and Expense Reimbursement

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Approved in part and denied in part

Order: Prepared by applicant

Additional Compensation approved: \$863.00

Additional Costs approved: \$46.15

Aggregate fees and costs approved in this application: \$909.15

Retainer held: \$0.00

Amount to be paid as administrative expense: \$909.15

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

ADDITIONAL COMPENSATION AND COSTS

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 13 case and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The court finds that the compensation and expenses sought and in the amounts above are reasonable, and the court will approve those amounts on a final basis.

PREVIOUSLY APPROVED COMPENSATION AND COSTS

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 13 case and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The applicant also prays that the court finalize interim fee orders in the amount of \$1,776.00. The court finds that the compensation and expenses sought and in the amounts above are reasonable, and the court will approve those amounts on a final basis.

PAYMENT OUTSIDE THE CHAPTER 13 PLAN

The applicant prays authorization for payment of the fees and costs directly from the debtors. Third and Final Application for Allowance of Fees ¶ 18, June 9, 2014, ECF #87. To the extent that the application prays leave to collect administrative costs outside the plan and particularly after discharge, the application is denied. The plan provides that the fees will be paid through the plan. Chapter 13 Plan § 3.07, March 31, 2009, ECF #5. The plan makes no provision for direct payment of fees by the debtor. Title 11 of United States Code § 1322(a)(2) provides, "The plan...shall provide for the full payment, in deferred cash payments, of all claims entitled to priority under section 507 of this title, unless the holder of a particular claim agrees to a different treatment of such claim..." Case law makes clear that unless the plan specifically provides for payment outside the plan and, if applicable, after discharge, administrative expenses are discharged and not collectible directly from the debtor. *In re Hanson*, 223 B.R. 775 (Bankr. D. Oregon 1998); *In re Johnson*, 344 B.R. 104 (9th Cir. B.A.P. 2006). Since the plan does not so provide in this case, collection outside the plan and after discharge is not consistent with § 1322(a), and to that extent, the application is denied.

3. [12-19905-A-13](#) JEFFREY/JANET PAHLOW MOTION TO INCUR DEBT
PK-4 6-25-14 [[65](#)]
JEFFREY PAHLOW/MV
PATRICK KAVANAGH/Atty. for dbt.
WITHDRAWN

Final Ruling.

The motion withdrawn, the matter is dropped as moot.

4. [14-10314](#)-A-13 DANIEL/LINDA MONTES
RSW-3
DANIEL MONTES/MV
ROBERT WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO CONFIRM PLAN
6-11-14 [[52](#)]

Tentative Ruling

Motion: Confirm Chapter 13 Plan

Notice: LBR 3015-1(d)(1), 9014-1(f)(1); written opposition filed by the trustee

Disposition: Denied without prejudice

Order: Civil minute order

The motion requests confirmation of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1323, 1325; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(1)-(2). The Chapter 13 trustee and creditor Ocwen Loan Servicing, LLC oppose the motion, objecting to confirmation.

PLAN CONFIRMATION

The plan proposes to reduce a Class 2 secured claim (Safe 1 Credit Union) based on the value of the collateral. But the failure to file a motion to value such claim that is granted before or in conjunction with the hearing on confirmation warrants denial of confirmation of the plan. LBR 3015-1(j); see also Ch. 13 Plan § 2.09(c).

In addition, the trustee and secured creditor raise other grounds in opposition to confirmation. The trustee states that the plan takes 68.45 months to fund and that the plan improperly proposes to reclassify Ocwen Loan Servicing, LLC's claim in class 4 even though Schedules I and J suggest the existence of pre-petition arrears owed to this creditor. The trustee identifies delinquencies in payment on several claims, which tends to show that the plan is not feasible. Further, the trustee argues that the plan fails to account for mortgage payments already paid by the trustee. Ocwen Loan Servicing, LLC asserts that it is owed arrears on its claim and that the plan does not provide for the cure of such arrears.

The court will not rule on these other grounds because confirmation must be denied on the procedural ground that a motion to value has not been filed and heard in conjunction with confirmation. But the court notes that if these factual grounds raised in opposition are undisputed by debtors and have not been sufficiently resolved in the plan as of the next confirmation hearing, then these grounds would support a denial of confirmation at such time.

75 DAY ORDER

A Chapter 13 plan must be confirmed no later than the first hearing date available after the 75-day period that commences on the date of this hearing. If a Chapter 13 plan has not been confirmed by such date, the court may dismiss the case on the trustee's motion. See 11 U.S.C. § 1307(c)(1).

5. [14-12223](#)-A-13 ANDRES ALVAREZ AND ELVIRA MOTION TO VALUE COLLATERAL OF
LKW-1 DE CAMPOS JP MORGAN CHASE BANK
ANDRES ALVAREZ/MV 6-18-14 [[21](#)]
LEONARD WELSH/Atty. for dbt.

Final Ruling

Motion: Value Collateral [Real Property; Nonresidential]

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by the moving party consistent with this ruling's instructions

Collateral Value: \$42,000.00

Secured Claim: \$42,000.00

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

The motion requests that the court value nonresidential real property that is the responding party's collateral. The court values the collateral at the amount set forth above. The responding creditor's claim is secured only to the extent of the collateral's value unencumbered by any senior liens. See 11 U.S.C. § 506(a).

The order shall state only that the court (i) grants the motion, (ii) values the property at the amount shown above, and (iii) determines that the responding party has a secured claim in the amount shown above equal to the value of the collateral unencumbered by senior liens and a general unsecured claim for the balance of the claim. The order shall not include any other additional findings or information.

6. [14-12223](#)-A-13 ANDRES ALVAREZ AND ELVIRA MOTION TO VALUE COLLATERAL OF
LKW-2 DE CAMPOS BANK OF NEW YORK MELLON
ANDRES ALVAREZ/MV 6-18-14 [[28](#)]
LEONARD WELSH/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Value Collateral [Real Property; Nonresidential]

Notice: Written opposition filed by the responding party

Disposition: Continued to August 20, 2014, at 9:00 a.m.

Order: Civil Minute Order

The motion seeks to value nonresidential real property that is the responding party's collateral. The responding party has requested a continuance to obtain a broker's opinion, appraisal or other evidence of the collateral's value. The court will continue the motion to the date indicated. No later than 14 days before the continued date of the hearing, the parties will file a joint status report.

If the parties have not resolved this matter, then the court will hold a scheduling conference on the continued date of the hearing and set an evidentiary hearing under Federal Rule of Bankruptcy Procedure 9014(d). An evidentiary hearing would be required because the disputed, material factual issue of the collateral's valuation must be resolved before the court can rule on the relief requested.

7. [14-12223](#)-A-13 ANDRES ALVAREZ AND ELVIRA MOTION TO DISMISS CASE FOR
MHM-1 DE CAMPOS FAILURE TO MAKE PLAN PAYMENTS
MICHAEL MEYER/MV 7-8-14 [[46](#)]
LEONARD WELSH/Atty. for dbt.

Final Ruling

The motion withdrawn, the matter is dropped as moot.

8. [14-12223](#)-A-13 ANDRES ALVAREZ AND ELVIRA OBJECTION TO CONFIRMATION OF
RCO-1 DE CAMPOS PLAN BY CREDITOR JPMORGAN CHASE
JPMORGAN CHASE BANK, N.A./MV BANK, N.A.
6-20-14 [[35](#)]
LEONARD WELSH/Atty. for dbt.
KRISTI WELLS/Atty. for mv.

Final Ruling

The plan withdrawn, the objection is denied as moot.

9. [14-11826](#)-A-13 SHAWNA EVANS MOTION TO CONFIRM PLAN
RSW-2 6-5-14 [[35](#)]
SHAWNA EVANS/MV
ROBERT WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Confirm Chapter 13 Plan

Notice: LBR 3015-1(d)(1), 9014-1(f)(1); written opposition required

Disposition: Pending

Order: Pending

The motion requests confirmation of the Chapter 13 plan in this case. 11 U.S.C. §§ 1322, 1323, 1325; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(1). The Chapter 13 trustee opposes the motion, objecting to confirmation. But the moving party has not filed a reply to the opposition.

CONFIRMATION

Without the benefit of a reply, the court cannot determine whether the grounds for the trustee's opposition are disputed or undisputed. As a result, the court does not consider the matter to be ripe for a decision in advance of the hearing.

If such grounds are undisputed, the moving party may appear at the hearing and affirm that they are undisputed. The moving party may opt not to appear at the hearing, and such nonappearance will be deemed by the court as a concession that the trustee's grounds for opposition are undisputed and meritorious.

If such grounds are disputed, the moving party shall appear at the hearing. The court may either (1) rule on the merits and resolve any disputed issues appropriate for resolution at the initial hearing, or (2) treat the initial hearing as a status conference and schedule an evidentiary hearing to resolve disputed, material factual issues or schedule a further hearing after additional briefing on any disputed legal issues.

75 DAY ORDER

A Chapter 13 plan must be confirmed no later than the first hearing date available after the 75-day period that commences on the date of this hearing. If a Chapter 13 plan has not been confirmed by such date, the court may dismiss the case on the trustee's motion. See 11 U.S.C. § 1307(c)(1).

10. [14-12326](#)-A-13 GARY WRIGHT AND KIM
MHM-1 GRIFFIN-WRIGHT
MICHAEL MEYER/MV
MOTION TO DISMISS CASE FOR
UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITORS AND/OR
MOTION TO DISMISS CASE
6-26-14 [[25](#)]
ROBERT WILLIAMS/Atty. for dbt.

Final Ruling

The motion withdrawn, the matter is dropped as moot.

11. [14-12326](#)-A-13 GARY WRIGHT AND KIM
RSW-1 GRIFFIN-WRIGHT
GARY WRIGHT/MV
MOTION TO VALUE COLLATERAL OF
AMERICREDIT FINANCIAL SERVICES,
INC.
6-23-14 [[19](#)]
ROBERT WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle]

Notice: Written opposition filed by responding party

Disposition: Continued for evidentiary hearing

Order: Civil Minute Order

The motion seeks to value collateral consisting of a motor vehicle. The court will hold a scheduling conference for the purpose of setting an evidentiary hearing under Federal Rule of Bankruptcy Procedure 9014(d). An evidentiary hearing is required because the disputed, material factual issue of the collateral's value must be resolved before the court can rule on the relief requested. If the debtors intend to dispute whether the vehicle was acquired for personal, family, or household purposes, so that the retail valuation standard in § 506(a)(2) does not apply, the debtors should indicate clearly that this factual issue is in dispute as well.

All parties shall appear at the hearing for the purpose of determining the nature and scope of the matter, identifying the disputed and undisputed issues, and establishing the relevant scheduling dates and deadlines. Alternatively, the court may continue the matter to allow the parties to file a joint status report that states:

- (1) all relief sought and the grounds for such relief;
- (2) the disputed factual or legal issues;
- (3) the undisputed factual or legal issues;
- (4) whether discovery is necessary or waived;
- (5) the deadline for Rule 26(a)(1)(A) initial disclosures;
- (6) the deadline for Rule 26(a)(2) expert disclosures (including written reports);
- (7) the deadline for the close of discovery;
- (8) whether the alternate-direct testimony procedure will be used;
- (9) the deadlines for any dispositive motions or evidentiary motions;
- (10) the dates for the evidentiary hearing and the trial time that will be required;
- (11) any other such matters as may be necessary or expedient to the resolution of these issues.

Unless the parties request more time, such a joint status report shall be filed 14 days in advance of the continued hearing date. The parties may jointly address such issues orally at the continued hearing in lieu of a written joint status report.

12. 12-13429 -A-13 RICHARD/KIMIE HUGHES LKW-5 RICHARD HUGHES/MV LEONARD WELSH/Atty. for dbt.	MOTION FOR COMPENSATION BY THE LAW OFFICE OF LEONARD K. WELSH FOR LEONARD K. WELSH, DEBTOR'S ATTORNEY(S) 6-12-14 [87]
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Final Ruling

Application: Interim Compensation and Expense Reimbursement

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Approved

Order: Prepared by applicant

Compensation approved: \$1,352.50

Costs approved: \$22.00

Aggregate fees and costs approved in this application: \$1,374.50

Retainer held: \$0.00

Amount to be paid as administrative expense: \$1,374.50

Unopposed motions are subject to the rules of default. Fed. R. Civ. P.55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 13 case and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant factors. *See id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on an interim basis. Such amounts shall be perfected, and may be adjusted, by a final application for compensation and expenses, which shall be filed prior to case closure. The moving party is authorized to draw on any retainer held.

13. [12-13429](#)-A-13 RICHARD/KIMIE HUGHES MOTION TO MODIFY PLAN
LKW-6 6-12-14 [[94](#)]
RICHARD HUGHES/MV
LEONARD WELSH/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Confirm Chapter 13 Plan

Notice: LBR 3015-1(d)(1), 9014-1(f)(1); written opposition required

Disposition: Granted, provided the Order Confirming Plan clarifies whether debtors' counsel is opting in or opting out of the flat fee. Chapter 13 Plan, § 2.06, June 12, 2014, ECF No. 98.

Order: Prepared by Chapter 13 trustee, approved by debtor's counsel

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 3015-1(d)(1), 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve confirmation of the plan.

14. [14-11929](#)-A-13 MARIA FRUTOS
PLG-1
MARIA FRUTOS/MV
STEVEN ALPERT/Atty. for dbt.

MOTION TO CONFIRM PLAN
5-28-14 [[15](#)]

Final Ruling

Motion: Confirm Chapter 13 Plan

Notice: LBR 3015-1(d)(1), 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by Chapter 13 trustee, approved by debtor's counsel

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 3015-1(d)(1), 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve confirmation of the plan.

15. [14-11231](#)-A-13 ERIC/CHRISTI LAFORTUNE
MHM-1

OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE MICHAEL H.
MEYER
6-24-14 [[42](#)]

PATRICK KAVANAGH/Atty. for dbt.

[The hearing on this matter will be concurrent with the hearing on the trustee's objection to the debtors' claim of exemptions in this case having docket control no. MHM-2.]

No tentative ruling.

16. [14-11231](#)-A-13 ERIC/CHRISTI LAFORTUNE
MHM-2
MICHAEL MEYER/MV
PATRICK KAVANAGH/Atty. for dbt.

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
6-24-14 [[48](#)]

No tentative ruling.

17. [13-13640](#)-A-13 DAVID/MARGARET SANCHEZ
MHM-1
MICHAEL MEYER/MV
PHILLIP GILLET/Atty. for dbt.
- MOTION TO DISMISS CASE FOR
UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITORS AND/OR
MOTION TO DISMISS CASE
7-1-14 [[67](#)]

No tentative ruling.

18. [09-18544](#)-A-13 JUAN/ANN PRIETO
DMG-5
JUAN PRIETO/MV
D. GARDNER/Atty. for dbt.
RESPONSIVE PLEADING
- MOTION TO MODIFY PLAN
5-14-14 [[161](#)]

Tentative Ruling

Motion: Modify Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(1); written opposition filed by the trustee

Disposition: Continued to August 20, 2014, at 9:00 a.m.

Order: Civil minute order

The motion requests modification of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1325, 1329; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(2). The Chapter 13 trustee opposes the motion, objecting to the modification.

The debtors have requested a continuance to resolve the issues of the amount of the arrearages the debtors owe to Nationstar Mortgage and any refunds Nationstar Mortgage may owe to the debtors for overpayments made by the debtors. The court will continue the matter to the date indicated. A joint status report shall be filed no later than August 12, 2014.

19. [13-16947](#)-A-13 ENRIQUE GOMEZ
JRH-3
ENRIQUE GOMEZ/MV
IVETA OVSEPYAN/Atty. for dbt.
RESPONSIVE PLEADING
- MOTION TO CONFIRM PLAN
6-4-14 [[79](#)]

[The hearing on this matter will be concurrent with the hearing on the trustee's motion to dismiss this case having docket control no. MHM-4.]

Tentative Ruling

Motion: Confirm Chapter 13 Plan

Notice: LBR 3015-1(d)(1), 9014-1(f)(1); written opposition required

Disposition: Pending

Order: Pending

The motion requests confirmation of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1323, 1325; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(1)-(2). The Chapter 13 trustee opposes the motion, objecting to confirmation. But the moving party has not filed a reply to the opposition.

Without the benefit of a reply, the court cannot determine whether the grounds for the trustee's opposition are disputed or undisputed. As a result, the court does not consider the matter to be ripe for a decision in advance of the hearing.

If such grounds are undisputed, the moving party may appear at the hearing and affirm that they are undisputed. The moving party may opt not to appear at the hearing, and such nonappearance will be deemed by the court as a concession that the trustee's grounds for opposition are undisputed and meritorious.

If such grounds are disputed, the moving party shall appear at the hearing. The court may either (1) rule on the merits and resolve any disputed issues appropriate for resolution at the initial hearing, or (2) treat the initial hearing as a status conference and schedule an evidentiary hearing to resolve disputed, material factual issues or schedule a further hearing after additional briefing on any disputed legal issues.

20. [13-16947](#)-A-13 ENRIQUE GOMEZ
MHM-4
MICHAEL MEYER/MV

MOTION TO DISMISS CASE FOR
UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITORS AND/OR
MOTION TO DISMISS CASE
7-1-14 [[88](#)]

IVETA OVSEPYAN/Atty. for dbt.
RESPONSIVE PLEADING

[The hearing on this matter will be concurrent with the hearing on the trustee's motion to dismiss this case having docket control no. JRH-3.]

No tentative ruling.

21. [10-12748](#)-A-13 TIMOTHY/FAITH REYNOLDS
RSW-9
TIMOTHY REYNOLDS/MV
ROBERT WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING
WITHDRAWN

MOTION TO MODIFY PLAN
6-18-14 [[176](#)]

Final Ruling

Motion: Confirm Modified Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by Chapter 13 trustee, approved by debtor's counsel

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 3015-1(d)(2), 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve modification of the plan.

22. [10-60451](#)-A-13 JAVIER HEREDIA
RSW-2
JAVIER HEREDIA/MV
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO APPROVE LOAN
MODIFICATION
6-17-14 [[41](#)]

Tentative Ruling

Motion: Approval of Mortgage Loan Modification

Notice: LBR 9014-1(f)(2); no written opposition required

Disposition: Granted in part, denied in part

Order: Prepared by moving party according to the instructions below

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

The motion seeks approval of a loan modification agreement. A copy of the loan modification agreement accompanies the motion. See Fed. R. Bankr. 4001(c). The court will grant the motion in part to authorize the debtor and the secured lender to enter into the loan modification agreement subject to the parties' right to reinstatement of the original terms of the loan documents in the event conditions precedent to the loan modification agreement are not satisfied. 11 U.S.C. § 364(d); Fed. R. Bankr. P. 4001(c). To the extent the modification is inconsistent with the confirmed plan, the debtor shall continue to perform the plan as confirmed until it is modified.

By granting this motion, the court is not approving the terms of any loan modification agreement. The motion will be denied in part to the extent that the motion requests approval of the loan modification agreement or other declaratory relief. The order shall state only that the parties are authorized to enter into the loan modification agreement subject to the parties' right to reinstate the agreement if all conditions precedent are not satisfied. The order shall not recite the terms of the loan modification agreement or state that the court approves the terms of the agreement.

23. [14-12354](#)-A-13 CHAIRRALYN WASHINGTON
MHM-1

OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE MICHAEL H.
MEYER
6-23-14 [[17](#)]

RANDY RISNER/Atty. for dbt.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: LBR 3015-1(c)(4), 9014-1(f)(2); no written opposition required

Disposition: Sustained; confirmation denied without prejudice to the
filing of an amended plan

Order: Civil minute order

CONFIRMATION

No responding party is required to file written opposition to the motion; opposition may be presented at the hearing. LBR 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

The plan filed by the debtor does not contain a term for the duration of payments. This material element of the plan should not be amended in the order confirming the plan. Instead, a new plan with a stated term should be transmitted to creditors and parties entitled to notice under Rule 2002(b) before the confirmation hearing before the court will consider confirmation. The court will sustain the objection and deny confirmation without prejudice to the filing of an amended plan.

75 DAY ORDER

A Chapter 13 plan must be confirmed no later than the first hearing date available after the 75-day period that commences on the date of this hearing. If a Chapter 13 plan has not been confirmed by such date, the court may dismiss the case on the trustee's motion. See 11 U.S.C. § 1307(c)(1).

24. [14-11955](#)-A-13 DAVID ARNONE

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
6-20-14 [[39](#)]

ROBERT WILLIAMS/Atty. for dbt.
DISMISSED

Final Ruling

The case dismissed, the order to show cause is discharged.

25. [14-11759](#)-A-13 KARLA SCHWEITZER
MHM-2
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
7-8-14 [[42](#)]

No tentative ruling.

26. [14-11760](#)-A-13 JUSTIN/DESIREE LAY
MHM-2
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
7-8-14 [[53](#)]

No tentative ruling.

27. [14-12360](#)-A-13 SERGIO BUENO
RSW-1
SERGIO BUENO/MV
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO SELL
7-9-14 [[22](#)]

Tentative Ruling

Motion: Sell Property

Notice: LBR 9014-1(f)(2); no written opposition required

Disposition: Granted

Order: Prepared by moving party and approved as to form and content by the Chapter 13 trustee

Property: 132 N. McDonald Way, Bakersfield, CA

Buyer: Alliance Investment—but not to an undisclosed assignee or nominee

Sale Price: \$110,000

Sale Type: Private sale subject to overbid opportunity

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Confirmation of a Chapter 13 plan revests property of the estate in the debtor unless the plan or order confirming the plan provides otherwise. 11 U.S.C. § 1327(b); *see also In re Tome*, 113 B.R. 626, 632 (Bankr. C.D. Cal. 1990). Here, the plan has not yet been confirmed, so the subject property remains property of the estate.

Section 363(b)(1) of Title 11 authorizes sales of property of the estate "other than in the ordinary course of business." 11 U.S.C. §§ 363(b)(1); *see also In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983) (requiring business justification). A Chapter 13 debtor has the rights and powers given to a trustee under § 363(b). 11 U.S.C. § 1303. Based on the motion and supporting papers, the court finds a proper reorganization purpose for this sale. The stay of the order provided by Federal Rule of Bankruptcy Procedure 6004(h) will be waived.

28. [14-11761](#)-A-13 FRANCISCO/DIANE LOPEZ MOTION TO VALUE COLLATERAL OF
RSW-1 J.P. MORGAN CHASE BANK,
FRANCISCO LOPEZ/MV NATIONAL ASSOCIATION
6-13-14 [[16](#)]
ROBERT WILLIAMS/Atty. for dbt.

Tentative Ruling

Motion: Value Collateral [Real Property; Nonresidential]

Notice: LBR 9014-1(f)(2); no written opposition required

Disposition: Granted

Order: Prepared by the moving party consistent with this ruling's instructions

Collateral Value: \$163,000.00

Secured Claim: \$0.00

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

The motion requests that the court value nonresidential real property that is the responding party's collateral. The court values the collateral at the amount set forth above. The responding creditor's claim is secured only to the extent of the collateral's value unencumbered by any senior liens. See 11 U.S.C. § 506(a).

The court presumes the real property is nonresidential based on the debtors' Schedule A which indicates a different property is the debtors' residence. In the future, counsel shall include in a chapter 13 valuation motion facts indicating whether the real property is the debtors' principal residence or is nonresidential property.

The order shall state only that the court (i) grants the motion, (ii) values the property at the amount shown above, and (iii) determines that the responding party has a secured claim in the amount shown above equal to the value of the collateral unencumbered by senior liens and a general unsecured claim for the balance of the claim. The order shall not include any other additional findings or information.

29. [14-11162](#)-A-13 DENNIS/LASHANE WILLIAMS MOTION TO DISMISS CASE FOR
MHM-2 FAILURE TO MAKE PLAN PAYMENTS
MICHAEL MEYER/MV 7-8-14 [[38](#)]
ROBERT WILLIAMS/Atty. for dbt.

No tentative ruling.

30. [10-11963](#)-A-13 SANDRA REBESKE MOTION TO MODIFY PLAN
PK-5 6-10-14 [[109](#)]
SANDRA REBESKE/MV

PATRICK KAVANAGH/Atty. for dbt.

Final Ruling

Motion: Confirm Modified Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by Chapter 13 trustee, approved by debtor's counsel

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 3015-1(d)(2), 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve modification of the plan.

31. [14-12363](#)-A-13 CARMEN VALENZUELA
MHM-1
MICHAEL MEYER/MV

MOTION TO DISMISS CASE FOR
UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITORS AND/OR
MOTION TO DISMISS CASE
6-26-14 [[31](#)]

FRANCISCO ALDANA/Atty. for dbt.

Final Ruling

The case converted to chapter 7, the motion is denied as moot.

32. [14-12363](#)-A-13 CARMEN VALENZUELA
MHM-2
MICHAEL MEYER/MV
FRANCISCO ALDANA/Atty. for dbt.

MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
7-8-14 [[38](#)]

Final Ruling

The case converted to chapter 7, the motion is denied as moot.

33. [11-14165](#)-A-13 CHRISTOPHER WEBB
RSW-3
CHRISTOPHER WEBB/MV
ROBERT WILLIAMS/Atty. for dbt.

CONTINUED MOTION TO AMEND
5-14-14 [[98](#)]

Tentative Ruling

Motion: Amend Order

Notice: LBR 9014-1(f)(2) / continued hearing date; no written opposition required

Disposition: Granted

Order: Prepared by the moving party

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Federal Rule of Civil Procedure 59 permits a motion to alter or amend a judgment. But the rule only allows amendment 28 days after the judgment is entered. Here, the order sought to be amended was entered October 1, 2013. So Rule 59 is inapplicable.

Rule 60(b) permits a motion for relief from a judgment or order to be brought within a reasonable time but not more than a year if the ground for the motion is "mistake, inadvertence, surprise, or excusable neglect." Fed. R. Civ. P. 60(b)(1), *incorporated by* Fed. R. Bankr. P. 9024. The court finds relief is warranted based on inadvertence and excusable neglect.

Alternatively, the court finds that relief is warranted under Rule 60(a). Fed. R. Civ. P. 60(a), *incorporated by* Fed. R. Bankr. P. 9024. Because the relief granted in the order exceeds the scope of the relief sought in the motion, the court will allow the order to be amended to conform to the relief sought in the motion. See Fed. R. Bankr. P. 9013.

34. [14-12169](#)-A-13 KEVIN/MARYANN HISER
RSW-1
KEVIN HISER/MV
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
GREEN TREE SERVICING, LLC
6-24-14 [[20](#)]

Tentative Ruling

Motion: Value Collateral [Real Property; Principal Residence]

Notice: LBR 9014-1(f)(2); no written opposition required

Disposition: Granted

Order: Prepared by the moving party consistent with this ruling's instructions

Collateral Value: \$137,000

Senior Liens: \$165,046

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Chapter 13 debtors may strip off a wholly unsecured junior lien encumbering the debtor's principal residence. 11 U.S.C. §§ 506(a), 1322(b)(2); *In re Lam*, 211 B.R. 36, 40-42 (B.A.P. 9th Cir. 1997); *In re Zimmer*, 313 F.3d 1220, 1222-25 (9th Cir. 2002). A motion to value the debtor's principal residence should be granted upon a threefold showing by the moving party. First, the moving party must proceed by noticed motion. Fed. R. Bankr. P. 3012. Second, the motion must be served on the holder of the secured claim. Fed. R. Bankr. P. 3012, 9014(a); LBR 3015-1(j). Third, the moving party must prove by admissible evidence that the debt secured by liens senior to the responding party's claim exceeds the value of the principal residence. 11 U.S.C. § 506(a); *Lam*, 211 B.R. at 40-42; *Zimmer*, 313 F.3d at 1222-25.

The motion seeks to value real property collateral that is the moving party's principal residence. Because the amount owed to senior lienholders exceeds the value of the collateral, the responding party's claim is wholly unsecured and no portion will be allowed as a secured claim. See 11 U.S.C. § 506(a).

The order shall state only that the court (i) grants the motion, (ii) values the property at the amount shown above, and (iii) determines that the responding party has a secured claim in the amount of \$0.00 and a general unsecured claim for the balance of the claim. The order shall not include any other additional findings or information.

35. [14-12569](#)-A-13 DAVID MURBACH
MHM-1
MICHAEL MEYER/MV

MOTION TO DISMISS CASE FOR
UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITORS AND/OR
MOTION TO DISMISS CASE
6-26-14 [[27](#)]

D. GARDNER/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

36. [09-10374](#)-A-13 BERNICE MCCOY
MHM-1
MICHAEL MEYER/MV
STEVEN STANLEY/Atty. for dbt.

OBJECTION TO DISCHARGE BY
MICHAEL H. MEYER
5-22-14 [[56](#)]

Tentative Ruling

Matter: Objection to 11 U.S.C. §1328 Certification

Notice: LBR 9014-1(f)(1)

Disposition: Continued to August 20, 2014, at 9:00 a.m.

Order: Civil minute order

The court continues this objection to August 20, 2014, at 9:00 a.m. to coincide with the hearing on the debtor's motion for waiver of the § 1328 certifications.

37. [09-10374](#)-A-13 BERNICE MCCOY
SMS-1
BERNICE MCCOY/MV

CONTINUED MOTION WAIVING
DEBTOR'S SECTION 1328
CERTIFICATION REQUIREMENT
6-5-14 [[59](#)]

STEVEN STANLEY/Atty. for dbt.

Tentative Ruling

Motion: Waive § 1328 Certification Requirement

Notice: LBR 9014-1(f)(1); no written opposition required

Disposition: Continued to August 20, 2014, at 9:00 a.m.

Order: Prepared by the moving party

The court previously continued the hearing on this matter to allow notice to be served on all creditors and parties in interest. The proof of service indicates compliance with the court's instructions.

The court will further continue the hearing on this matter to the date indicated above. The court requests briefing on the authority permitting the court to waive the § 1328 certifications. Supplemental briefing by the debtor is required no later than August 6, 2014.

If the trustee has a position on this issue, the trustee may file short statement of its position as to the waiver of the § 1328 certification requested by the debtor no later than August 13, 2014.

38. [09-17579](#)-A-13 GREGORY/NATALIE WATERS
PK-5

MOTION FOR COMPENSATION FOR
PATRICK KAVANAGH, DEBTOR'S
ATTORNEY(S)
6-25-14 [[88](#)]

PATRICK KAVANAGH/Atty. for dbt.

Tentative Ruling

Application: Interim Compensation and Expense Reimbursement

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Approved

Order: Prepared by applicant

Compensation approved: \$8,455.50

Costs approved: \$45.00

Aggregate fees and costs approved in this application: \$8,500.50

Retainer held: \$1,500.00

Amount to be paid as administrative expense: \$7,000.50

Unopposed motions are subject to the rules of default. Fed. R. Civ. P.55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 13 case and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is

determined by considering all relevant factors. See *id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on an interim basis. Such amounts shall be perfected, and may be adjusted, by a final application for compensation and expenses, which shall be filed prior to case closure. The moving party is authorized to draw on any retainer held.

39. [14-11683](#)-A-13 JOSE SANCHEZ
NES-1
JOSE SANCHEZ/MV
NEIL SCHWARTZ/Atty. for dbt.

MOTION TO CONFIRM PLAN
6-4-14 [[25](#)]

Final Ruling

Motion: Confirm Chapter 13 Plan

Notice: LBR 3015-1(d)(1), 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by Chapter 13 trustee, approved by debtor's counsel

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 3015-1(d)(1), 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve confirmation of the plan.

40. [13-16684](#)-A-13 ROBERT/KAREN BAKER
PK-2

MOTION FOR COMPENSATION FOR
PATRICK KAVANAGH, DEBTOR'S
ATTORNEY(S)
6-11-14 [[43](#)]

PATRICK KAVANAGH/Atty. for dbt.

Final Ruling

Application: Interim Compensation and Expense Reimbursement

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Approved

Order: Prepared by applicant

Compensation approved: \$5,581.00

Costs approved: \$29.57

Aggregate fees and costs approved in this application: \$5,610.57

Retainer held: \$1,119.00

Amount to be paid as administrative expense: \$4,491.57

Unopposed motions are subject to the rules of default. Fed. R. Civ. P.55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 13 case and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant factors. *See id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on an interim basis. Such amounts shall be perfected, and may be adjusted, by a final application for compensation and expenses, which shall be filed prior to case closure. The moving party is authorized to draw on any retainer held.

41. [13-16685](#)-A-13 ROBERT/ORENE BARKER
PK-1

CONTINUED MOTION FOR
COMPENSATION FOR PATRICK
KAVANAGH, DEBTOR'S ATTORNEY(S)
6-4-14 [[29](#)]

PATRICK KAVANAGH/Atty. for dbt.

Tentative Ruling

Application: Interim Compensation and Expense Reimbursement

Notice: LBR 9014-1(f)(2) / continued hearing date; no written opposition required

Disposition: Approved

Order: Prepared by applicant

The court continued the hearing on this matter. The debtors have filed a declaration stating that they have no objection to the court's authorizing the fees and costs requested. Consistent with the court's civil minutes from the June 25, 2014, hearing, the court will approve

the fee application and allow the fees requested as stated below.

Applicant: Patrick Kavanagh

Compensation approved: \$4175.00

Costs approved: \$0.00

Aggregate fees and costs approved in this application: \$4175.00

Retainer held: \$1500.00 (retainer has been paid)

Amount to be paid as administrative expense: \$2675.00

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 13 case and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant factors. *See id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on an interim basis. Such amounts shall be perfected, and may be adjusted, by a final application for compensation and expenses, which shall be filed prior to case closure. The moving party is authorized to draw on any retainer held.

42. [11-19692](#)-A-13 CHARLES/MYLENE GABRIEL MOTION TO MODIFY PLAN
RSW-4 6-13-14 [[63](#)]
CHARLES GABRIEL/MV
ROBERT WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Modify Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(1); written opposition filed by the trustee

Disposition: Denied

Order: Civil minute order

The motion requests modification of the Chapter 13 plan in this case. *See* 11 U.S.C. §§ 1322, 1325, 1329; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(2). The Chapter 13 trustee opposes the motion, objecting to the modification. Ally Financial Inc. also opposes the motion.

The court will deny the motion because updated Schedules I and J have not been filed recently. The last filed Schedules I and J were filed November 26, 2013. The feasibility of the plan cannot be determined as a result. *See* 11 U.S.C. § 1325(a)(6).

43. [14-11293](#)-A-13 SANTIAGO PEINADO

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
6-20-14 [[40](#)]

DISMISSED

Final Ruling

The case dismissed, the order to show cause is discharged.

10:30 a.m.

1. [14-12047](#)-A-7 ELLSWORTH HARDY PRO SE REAFFIRMATION AGREEMENT
WITH CAPITAL ONE AUTO FINANCE
6-24-14 [[11](#)]

No tentative ruling.

2. [13-16578](#)-A-7 JUAN PANTOJA CONTINUED REAFFIRMATION
AGREEMENT WITH TIDEWATER CREDIT
SERVICES
6-2-14 [[130](#)]

FRANK ALVARADO/Atty. for dbt.

No tentative ruling.

3. [13-16578](#)-A-7 JUAN PANTOJA REAFFIRMATION AGREEMENT WITH
CONSUMER PORTFOLIO SERVICES
6-13-14 [[135](#)]

FRANK ALVARADO/Atty. for dbt.

No tentative ruling.

1:00 p.m.

1. [13-16807](#)-A-7 NATHANIEL RICHARDSON MOTION TO COMPROMISE
PLG-2 CONTROVERSY/APPROVE SETTLEMENT
NATHANIEL RICHARDSON/MV AGREEMENT WITH RANDELL PARKER
AND RONITA RAM
6-5-14 [[19](#)]

STEVEN ALPERT/Atty. for dbt.
STIPULATION

Tentative Ruling

Motion: Approve Compromise or Settlement of Controversy

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted in part; denied in part

Order: Prepared by moving party

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

In determining whether to approve a compromise under Federal Rule of Bankruptcy Procedure 9019, the court determines whether the compromise was negotiated in good faith and whether the party proposing the compromise reasonably believes that the compromise is the best that can be negotiated under the facts. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1982). More than mere good faith negotiation of a compromise is required. The court must also find that the compromise is fair and equitable. *Id.* "Fair and equitable" involves a consideration of four factors: (i) the probability of success in the litigation; (ii) the difficulties to be encountered in collection; (iii) the complexity of the litigation, and expense, delay and inconvenience necessarily attendant to litigation; and (iv) the paramount interest of creditors and a proper deference to the creditors' expressed wishes, if any. *Id.* The party proposing the compromise bears the burden of persuading the court that the compromise is fair and equitable and should be approved. *Id.*

Based on the motion and supporting papers, the court finds that the compromise is fair and equitable considering the relevant *A & C Properties* factors. The compromise will be approved.

The motion also requests that the court rule that sufficient notice of this stipulation has been given to all creditors and to all parties entitled to notice. Although the court may review notice and service of motions brought before it and may deny motions for insufficient notice or service, the court's ruling will be limited to the merits of the motion. Thus, the court will not rule that notice or service has been sufficient. The order shall not include any statements that notice or service has been sufficient.

2. [12-11008](#)-A-7 RAFAEL ALONSO
VG-5
VINCENT GORSKI/MV
NICHOLAS ANIOTZBEHERE/Atty. for dbt.
VINCENT GORSKI/Atty. for mv.

MOTION TO COMPEL
6-13-14 [[34](#)]

Tentative Ruling

Motion: Compel Turnover

Notice: LBR 9014-1(f)(1); written opposition filed by debtor

Disposition: Continued for an evidentiary hearing

Order: Civil minute order or scheduling order

The court will hold a scheduling conference for the purpose of setting an evidentiary hearing under Federal Rule of Bankruptcy Procedure 9014(d). An evidentiary hearing is required because disputed, material factual issues must be resolved before the court can rule on the relief requested.

Preliminarily, the court identifies the following disputed, material factual issues:

- (i) whether the assets described in the motion (including proceeds of such assets) exist and are within the debtor's possession or control;
- (ii) whether the documents (bank statements and insurance papers) described in the motion exist and are within the debtor's possession or control;
- (iii) whether the assets described in the motion are property of the estate (which includes proceeds of property of the estate, § 541(a)(6));
- (iv) whether Delano Export is a business that was owned by the debtor on the petition date;
- (v) whether Alonso Produce and Rincon Produce have any assets that are included within property of the estate;
- (vi) whether the debtor owned harvesting equipment, supplies, tools, vehicles and machinery on the petition date;
- (vii) whether the debtor has keys and padlocks required to access the assets;
- (viii) whether the debtor owned an interest in Pacific Valley Contracting on the petition date;
- (ix) whether the assets of Pacific Valley Contracting are included in the property of the estate or whether property of the estate includes only any interest the debtor had in Pacific Valley Contracting on the petition date.

All parties shall appear at the hearing for the purpose of determining the nature and scope of the matter, identifying the disputed and undisputed issues, and establishing the relevant scheduling dates and deadlines. Alternatively, the court may continue the matter to allow the parties to file a joint status report that states:

- (1) all relief sought and the grounds for such relief;
- (2) the disputed factual or legal issues;
- (3) the undisputed factual or legal issues;
- (4) whether discovery is necessary or waived;
- (5) the deadline for Rule 26(a)(1)(A) initial disclosures;
- (6) the deadline for Rule 26(a)(2) expert disclosures (including written reports);
- (7) the deadline for the close of discovery;
- (8) whether the alternate-direct testimony procedure will be used;
- (9) the deadlines for any dispositive motions or evidentiary motions;
- (10) the dates for the evidentiary hearing and the trial time that

will be required;

(11) any other such matters as may be necessary or expedient to the resolution of these issues.

Unless the parties request more time, such a joint status report shall be filed 14 days in advance of the continued hearing date. The parties may jointly address such issues orally at the continued hearing in lieu of a written joint status report.

3. [13-17909](#)-A-7 WILLIE BAKER CONTINUED MOTION FOR TURNOVER
KDG-4 OF PROPERTY
RANDELL PARKER/MV 5-1-14 [[64](#)]
NEIL SCHWARTZ/Atty. for dbt.
LISA HOLDER/Atty. for mv.
RESPONSIVE PLEADING

[The hearing on this matter will be concurrent with the hearing on the trustee's objection to the debtor's claim of exemptions in this case having docket control no. KDG-5.]

No tentative ruling.

4. [13-17909](#)-A-7 WILLIE BAKER OBJECTION TO DEBTOR'S CLAIM OF
KDG-5 EXEMPTIONS
RANDELL PARKER/MV 6-20-14 [[86](#)]
NEIL SCHWARTZ/Atty. for dbt.
LISA HOLDER/Atty. for mv.
RESPONSIVE PLEADING

Tentative Ruling

Objection: Claim of Exemptions

Disposition: Continued for an evidentiary hearing

Order: Civil minute order or scheduling order

The court will hold a scheduling conference for the purpose of setting an evidentiary hearing under Federal Rule of Bankruptcy Procedure 9014(d). An evidentiary hearing is required because disputed, material factual issues must be resolved before the court can rule on the relief requested.

Preliminarily, the court identifies the following disputed, material factual issues, legal issues, and mixed factual and legal issues:

(1) whether the debtor failed adequately to disclose the Honda CRV vehicle in her schedules when she was not on title to the vehicle and whether she intended such failure;

(2) whether the debtor improperly exempted the proceeds of real property she voluntarily transferred prepetition;

(3) whether the debtor has acted in bad faith in claiming the amended exemptions in the vehicle and in the proceeds of the real property located at 1409 Lookout Lane ("real property") and whether the debtor intentionally and deliberately delayed amending her exemptions for the purpose of gaining an improper advantage;

- (4) whether bad faith remains a basis for disallowing an exemption after *Law v. Siegel*, 134 S. Ct. 1188 (2014);
- (5) whether trustee's incurring of fees and costs as to the first objection to exemptions constitutes prejudice (considering that the objection was dropped as moot due to an amendment to the exemptions) and whether such prejudice warrants disallowing the amended exemption in the vehicle and the proceeds of the real property sale;
- (6) whether the debtor's actions have warranted the trustee's incurring of fees and costs as to the second objection to exemptions, and whether such actions caused prejudice that warrants disallowing the amended exemption in the vehicle and the proceeds of the real property sale;
- (7) whether the debtor's actions in response to the trustee's demand for turnover of the vehicle when it was non-exempt warranted the trustee's incurring of fees and costs as to the trustee's motion to compel turnover, and whether such actions caused prejudice that warrants disallowing the amended exemption in the vehicle;
- (8) whether a transfer occurred when the debtor quitclaimed her interest in the real property prepetition to William Baker;
- (9) if a transfer actually occurred when the debtor quitclaimed her interest in the real property to William Baker, whether the transfer a fraudulent transfer avoidable under § 548 or a preference avoidable under § 547 or whether the transfer was a legitimate transfer between spouses to facilitate division and liquidation of jointly owned (or community) property interests;
- (10) whether the trustee has "recovered" the proceeds of the real property (or the real property) for purposes of § 522(g), meaning the trustee was legally entitled to recover such property under §§ 542, 547, 548 and other enumerated sections in § 522(g).

All parties shall appear at the hearing for the purpose of determining the nature and scope of the matter, identifying the disputed and undisputed issues, and establishing the relevant scheduling dates and deadlines. Alternatively, the court may continue the matter to allow the parties to file a joint status report that states:

- (1) all relief sought and the grounds for such relief;
- (2) the disputed factual or legal issues;
- (3) the undisputed factual or legal issues;
- (4) whether discovery is necessary or waived;
- (5) the deadline for Rule 26(a)(1)(A) initial disclosures;
- (6) the deadline for Rule 26(a)(2) expert disclosures (including written reports);
- (7) the deadline for the close of discovery;
- (8) whether the alternate-direct testimony procedure will be used;
- (9) the deadlines for any dispositive motions or evidentiary motions;
- (10) the dates for the evidentiary hearing and the trial time that will be required;
- (11) any other such matters as may be necessary or expedient to the resolution of these issues.

Unless the parties request more time, such a joint status report shall be filed 14 days in advance of the continued hearing date. The parties may jointly address such issues orally at the continued hearing in lieu of a written joint status report.

RANDELL PARKER/MV
PATRICK KAVANAGH/Atty. for dbt.
VINCENT GORSKI/Atty. for mv.
RESPONSIVE PLEADING

Final Ruling

At the suggestion of the parties, the matter is continued to August 20, 2014, at 1:00 p.m. Not later than August 13, 2014, the parties shall file a joint status report.

6. [11-63718](#)-A-7 TIMOTHY/ALLISON DOLAN MOTION FOR COMPENSATION FOR M.
MKK-2 KATHLEEN KLEIN, ACCOUNTANT(S)
M. KLEIN/MV 6-25-14 [[252](#)]
JACOB EATON/Atty. for dbt.

No tentative ruling.

7. [11-63718](#)-A-7 TIMOTHY/ALLISON DOLAN MOTION FOR COMPENSATION FOR
TGM-8 TRUDI G. MANFREDO, TRUSTEE'S
RANDELL PARKER/MV ATTORNEY(S).
6-17-14 [[245](#)]
JACOB EATON/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.

Final Ruling

Application: Final Compensation and Expense Reimbursement
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Approved
Order: Prepared by applicant

Applicant: Trudi G. Manfredo
Compensation approved: \$8577.50
Costs approved: \$846.80
Aggregate fees and costs approved in this application: \$9424.30

Unopposed motions are subject to the rules of default. Fed. R. Civ. P.55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a trustee, examiner or professional person employed under § 327 or § 1103 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering all relevant factors. *See id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis as to the amounts requested.

8. [14-12821](#)-A-7 DANIEL/JUDEE SWAINSTON MOTION TO AVOID LIEN OF STEVEN
LKW-1 J. PELLE
DANIEL SWAINSTON/MV 6-10-14 [9]
LEONARD WELSH/Atty. for dbt.

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Granted in part, denied in part
Order: Prepared by moving party

Liens Plus Exemption: \$630,114
Property Value: \$397,500
Judicial Lien Avoided: \$232,614

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of—(i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

The responding party's judicial lien, all other liens, and the exemption amount together exceed the property's value by an amount greater than or equal to the debt secured by the responding party's lien. As a result, the responding party's judicial lien will be avoided entirely.

9. [13-13626](#)-A-7 DOXIE PALMA
UST-2
TRACY DAVIS/MV
ROBERT WILLIAMS/Atty. for dbt.
ROBIN TUBESING/Atty. for mv.

MOTION TO DISMISS CASE PURSUANT
TO 11 U.S.C. SECTION 707(B)
6-2-14 [83]

Final Ruling

Motion: Dismiss Chapter 7 Case under § 707(b)(1)-(2) [Presumption of Abuse]

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by moving party

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

A motion to dismiss a Chapter 7 bankruptcy case is decided under the standards in § 707(b), which offers creditors or the United States Trustee two grounds of showing that a particular Chapter 7 is abusive: § 707(b)(2), which creates a presumption of abuse, and § 707(b)(3), which allows abuse to be shown based on the totality of the circumstances or bad faith. Section 707(b) is applicable only to cases in which the debts are primarily consumer debt. 11 U.S.C. § 101(8). Applicable only to above-median income debtors, the presumption of § 707(b)(2) is triggered when the debtor's current monthly income less specified expenses, 11 U.S.C. § 707(b)(2)(A)(ii)-(iv), multiplied by 60 is not less than the lesser of 25% of the debtor's non-priority unsecured debt or \$7,475.00, whichever is greater, or \$12,475.00. The presumption may be rebutted by demonstrating special circumstances, including serious medical condition or call to duty in the Armed Forces. 11 U.S.C. § 707(b)(2)(B)(i).

This case involves an above-median income debtor whose debts are primarily consumer debts. After adjusting for any improperly claimed deductions from income, the debtor's monthly disposable income amount on Form B22A, multiplied by 60, exceeds the applicable statutory limit under § 707(b)(2)(A)(i).

Based on the motion's well-pleaded facts, the presumption of abuse arises under § 707(b)(2). No opposition has been filed. The debtor's own Form B22A indicates that the presumption of abuse arises. The court treats this as an admission that the presumption of abuse arises.

The only indication that special circumstances exist is Exhibit 7, which is a declaration apparently made by the debtor and attached as an exhibit to the motion. But this declaration was not been filed by the debtor in response to the motion, so the motion remains unopposed.

Further, the declaration does not comply with § 707(b)(2)(B)(ii), which requires "documentation for such expense or adjustment to income." The U.S. Trustee has said that despite a repeated request for evidence from the debtor regarding a 5% reduction in income, such

actual evidence has not been provided (other than the declaration). As to the other expenses discussed in the declaration, such as funds paid to support relatives, no documentation for such expense or adjustment to income has been provided in opposition to this motion, so these expenses will not be taken into account.

Since the matter has been resolved under § 707(b)(2), the court makes no findings under § 707(b)(3). 11 U.S.C. § 707(b)(2)-(3). The motion will be granted and the case dismissed.

10. [13-13967](#)-A-7 MOTEL IOSHPE ORDER TO SHOW CAUSE WHY
[14-1026](#) ADVERSARY PROCEEDING SHOULD NOT
MAYTAL, LLC V. IOSHPE BE DISMISSED
6-5-14 [[29](#)]

No tentative ruling.

11. [14-10674](#)-A-7 SHARON LORAN MOTION TO AVOID LIEN OF STELLAR
FPS-1 RECOVERY INC.
SHARON LORAN/MV 5-27-14 [[18](#)]
FRANK SAMPLES/Atty. for dbt.

Final Ruling

Motion: Avoid Lien that Impairs Exemption

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by moving party

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of-(i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

The responding party's judicial lien, all other liens, and the exemption amount together exceed the property's value by an amount greater than or equal to the debt secured by the responding party's lien. As a result, the responding party's judicial lien will be avoided entirely.

12. [14-11478](#)-A-7 LANCE/JANICE ST PIERRE MOTION TO SELL AND/OR MOTION
JMV-3 FOR COMPENSATION FOR GOULD
JEFFREY VETTER/MV AUCTION AND APPRAISAL COMPANY,
AUCTIONEER(S)
7-1-14 [[60](#)]
- VINCENT GORSKI/Atty. for dbt.
D. GARDNER/Atty. for mv.

Tentative Ruling

Motion: Sell Property and Compensate Auctioneer

Notice: LBR 9014-1(f)(2); no written opposition required

Disposition: Granted in part, denied in part

Order: Prepared by moving party

Property: 1998 Freightliner and equipment used in the operation of debtor's former business as described in the notice of hearing

Sale Type: Public auction

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

SALE BY PUBLIC AUCTION

Section 363(b)(1) of Title 11 authorizes sales of property of the estate "other than in the ordinary course of business." 11 U.S.C. §§ 363(b)(1); *see also In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983) (requiring business justification). The moving party is the Chapter 7 trustee and liquidation of property of the estate is a proper purpose. *See* 11 U.S.C. § 704(a)(1). As a result, the court will grant the motion. The stay of the order provided by Federal Rule of Bankruptcy Procedure 6004(h) will be waived.

COMPENSATION

Section 330(a) of Title 11 authorizes "reasonable compensation for actual, necessary services" rendered by a professional person employed under § 327 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a). Reasonable compensation is determined by considering all relevant factors. *See id.* § 330(a)(3).

The court finds that the compensation sought is reasonable and will approve the application in part as to Gould Auction & Appraisal Company. Further, the order employing the auctioneer also referred only to compensation paid to Gould Auction & Appraisal Company. Because Jerry Gould was not named in the order employing the auctioneer, the court will not approve compensation as to Jerry Gould, but will approve the compensation as to Gould Auction & Appraisal

Company.

13. [14-13080](#)-A-7 TAMARA RUTLEDGE ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
6-30-14 [[11](#)]

Final Ruling

All past due filing fees have been paid. The order to show cause is discharged, and the case will remain pending. The court will issue a minute order.

14. [14-11584](#)-A-7 OSCAR GUTIERREZ AND MOTION TO DISMISS CASE PURSUANT
UST-1 ALICIA ROLIN TO 11 U.S.C. SECTION 707(B)
TRACY DAVIS/MV 6-6-14 [[18](#)]
NEIL SCHWARTZ/Atty. for dbt.
ROBIN TUBESING/Atty. for mv.
NON-OPPOSITION

Final Ruling

Motion: Dismiss Chapter 7 Case under § 707(b)(1)-(2) [Presumption of Abuse]

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by moving party

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). The debtor has filed a non-opposition, and no opposition has been filed.

The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

A motion to dismiss a Chapter 7 bankruptcy case is decided under the standards in § 707(b), which offers creditors or the United States Trustee two grounds of showing that a particular Chapter 7 is abusive: § 707(b)(2), which creates a presumption of abuse, and § 707(b)(3), which allows abuse to be shown based on the totality of the circumstances or bad faith. Section 707(b) is applicable only to cases in which the debts are primarily consumer debt. 11 U.S.C. § 101(8). Applicable only to above-median income debtors, the presumption of § 707(b)(2) is triggered when the debtor's current monthly income less specified expenses, 11 U.S.C. § 707(b)(2)(A)(ii)-(iv), multiplied by 60 is not less than the lesser of 25% of the debtor's non-priority unsecured debt or \$7,475.00, whichever is greater, or \$12,475.00. The presumption may be rebutted by demonstrating special circumstances, including serious medical condition or call to duty in the Armed Forces. 11 U.S.C. § 707(b)(2)(B)(i).

This case involves an above-median income debtor whose debts are primarily consumer debts. After adjusting for any improperly claimed deductions from income, the debtor's monthly disposable income amount on Form B22A, multiplied by 60, exceeds the applicable statutory limit under § 707(b)(2)(A)(i).

Based on the motion's well-pleaded facts, the presumption of abuse arises under § 707(b)(2). No opposition has been filed. There is no indication that special circumstances exist.

Since the matter has been resolved under § 707(b)(2), the court makes no findings under § 707(b)(3). 11 U.S.C. § 707(b)(2)-(3). The motion will be granted and the case dismissed.

15. [14-13192](#)-A-7 ELMER/MARGARET BEGLEY ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
7-7-14 [[13](#)]
FINAL PAYMENT OF \$29.00 PAID
7/10/14

Final Ruling

All past due filing fees have been paid. The order to show cause is discharged, and the case will remain pending. The court will issue a minute order.

16. [14-11298](#)-A-7 MANUEL/IDA MALDONADO MOTION TO SELL
JMV-2 6-19-14 [[19](#)]
JEFFREY VETTER/MV
CURTIS FLOYD/Atty. for dbt.

Tentative Ruling

Motion: Sell Property and Compensate Auctioneer
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Granted in part, denied in part
Order: Prepared by moving party

Property: 2006 Toyota Highlander
Sale Type: Public auction

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55(c), *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

SALE BY PUBLIC AUCTION

Section 363(b)(1) of Title 11 authorizes sales of property of the estate "other than in the ordinary course of business." 11 U.S.C. §§ 363(b)(1); see also *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983) (requiring business justification). The moving party is the Chapter 7 trustee and liquidation of property of the estate is a proper purpose. See 11 U.S.C. § 704(a)(1). As a result, the court will grant the motion. The stay of the order provided by Federal Rule of Bankruptcy Procedure 6004(h) will be waived.

COMPENSATION

Section 330(a) of Title 11 authorizes "reasonable compensation for actual, necessary services" rendered by a professional person employed under § 327 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The court finds that the compensation sought is reasonable and will approve the application in part as to Gould Auction & Appraisal Company. Further, the order employing the auctioneer also referred only to compensation paid to Gould Auction & Appraisal Company. Because Jerry Gould was not named in the order employing the auctioneer, the court will not approve compensation as to Jerry Gould, but will approve the compensation as to Gould Auction & Appraisal Company.

1:15 p.m.

- | | | | |
|----|-------------------------------|---------------|--------------------------------|
| 1. | 12-11008 -A-7 | RAFAEL ALONSO | MOTION TO APPROVE DEBTOR'S |
| | 12-1095 | PWG-5 | WRITTEN WAIVER OF DISCHARGE |
| | ZUBCIC V. ALONSO | | 7-9-14 [106] |
| | JOHN DULCICH/Atty. for mv. | | |

No tentative ruling.

- | | | | |
|----|-------------------------------|------------------|---------------------------------|
| 2. | 11-62509 -A-7 | SHAVER LAKEWOODS | CONTINUED STATUS CONFERENCE RE: |
| | 14-1003 | DEVELOPMENT INC. | COMPLAINT |
| | PARKER V. RODRIGUEZ | | 1-6-14 [1] |
| | KALEB JUDY/Atty. for pl. | | |
| | RESPONSIVE PLEADING | | |

Final Ruling

The status conference is continued to August 20, 2014, at 1:15 p.m.

8. [12-11008](#)-A-7 RAFAEL ALONSO CONTINUED AMENDED COMPLAINT
[12-1095](#)
5-9-13 [[36](#)]
ZUBCIC V. ALONSO
JOHN DULCICH/Atty. for pl.
RESPONSIVE PLEADING

No tentative ruling.

1:30 p.m.

1. [14-11900](#)-A-7 ROOSEVELT/NINA BARBEE MOTION FOR RELIEF FROM
KEH-1 AUTOMATIC STAY
BALBOA THRIFT & LOAN/MV 6-20-14 [[11](#)]
NEIL SCHWARTZ/Atty. for dbt.
KEITH HERRON/Atty. for mv.

Final Ruling

Motion: Stay Relief

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by moving party

Subject: 2011 Chevrolet HHR LT Sport Wagon

Unopposed motions are subject to the rules of default. Fed. R. Civ. P.55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Section 362(d)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982). In this case, the aggregate amount due all liens exceeds the value of the collateral and the debtor has no equity in the property. The motion will be granted, and Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

2. [13-10247](#)-A-7 FLIGHT TEST ASSOCIATES, MOTION FOR RELIEF FROM
DMG-1 INC. AUTOMATIC STAY
MISSION BANK/MV
7-7-14 [[107](#)]
LEONARD WELSH/Atty. for dbt.
D. GARDNER/Atty. for mv.

No tentative ruling.

3. [14-12352](#)-A-7 VALLEY MEDICAL GROUP OF MOTION FOR RELIEF FROM
WW-1 KERN COUNTY, INC. AUTOMATIC STAY
KARLA CARILLO, A MINOR, BY AND 7-9-14 [[25](#)]
THROUGH HER GUARDIAN AD LITEM,
T. BELDEN/Atty. for dbt.
MICHAEL FLETCHER/Atty. for mv.

Tentative Ruling

Motion: Stay Relief

Notice: LBR 9014-1(f)(2); no written opposition required

Disposition: Granted only to the extent specified in this ruling

Order: Prepared by movant consistent with this ruling

Subject: Lawsuit entitled Karla Carillo, et al., v. Carlos Alvarez, et al., pending the Kern County Superior Court, Case No. S-1500-CV-278424

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Section 362(d)(1) authorizes stay relief for cause. Cause is determined on a case-by-case basis and may include the existence of litigation pending in a non-bankruptcy forum that should properly be pursued. *In re Tucson Estates, Inc.*, 912 F.2d 1162, 1169 (9th Cir. 1990).

Courts may consider whichever factors are relevant to the particular case. See *id.* (applying only four of the factors that were relevant in the case). The decision whether to lift the stay is within the court's discretion. *Id.*

Having considered the motion's well-pleaded facts, the court finds cause to grant stay relief subject to the limitations described in this ruling.

The moving party shall have relief from stay to pursue the pending state court litigation identified in the motion through judgment. The moving party may also file post-judgment motions, and appeals. But no bill of costs may be filed without leave of this court, no attorney's fees shall be sought or awarded, and no action shall be taken to collect or enforce any judgment, except: (1) from applicable insurance proceeds; or (2) by filing a proof of claim in this court. The motion will be granted to the extent specified herein, and the stay of the order provided by Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

4. [14-11478](#)-A-7 LANCE/JANICE ST PIERRE MOTION FOR RELIEF FROM
TRM-53 AUTOMATIC STAY
HILTON GRAND VACATIONS 5-23-14 [[43](#)]
MANAGEMENT, LLC/MV
VINCENT GORSKI/Atty. for dbt.
THOMAS MULALLY/Atty. for mv.

Tentative Ruling

Motion: Stay Relief

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Continued to August 20, 2014, at 1:30 p.m.

Order: Prepared by moving party

Subject: Timeshare located at 455 Karen Ave., Las Vegas, NV

The court continues this matter to the date indicated above. The trustee is represented by an attorney in this case. The motion shall be served on the trustee's attorney no later than 14 days in advance of the continued hearing date. Fed. R. Bankr. P. 9013.

1:45 p.m.

1. [10-12709](#)-A-11 ENNIS COMMERCIAL MOTION FOR AN ORDER AUTHORIZING
[14-1062](#) PROPERTIES, LLC LRP-2 SERVICE BY PUBLICATION
ENNIS COMMERCIAL PROPERTIES, 6-30-14 [[6](#)]
LLC ET AL V. ENNIS DEVELOPMENT
MICHAEL GOMEZ/Atty. for mv.
OST 7/1/14

No tentative ruling.

2. [14-12637](#)-A-11 TOURE/ROLANDA TYLER CHAPTER 11 STATUS CONFERENCE
RE: VOLUNTARY PETITION
5-21-14 [[1](#)]
LEONARD WELSH/Atty. for dbt.

No tentative ruling.

3. [14-12637](#)-A-11 TOURE/ROLANDA TYLER MOTION TO VALUE COLLATERAL OF
LKW-2 INOCENCIO AND NOEMI MADERA
TOURE TYLER/MV 6-26-14 [[42](#)]
LEONARD WELSH/Atty. for dbt.

No tentative ruling.

4. [14-12637](#)-A-11 TOURE/ROLANDA TYLER MOTION FOR COMPENSATION FOR
LKW-3 LEONARD K. WELSH, DEBTOR'S
TOURE TYLER/MV ATTORNEY(S)
7-2-14 [[56](#)]

LEONARD WELSH/Atty. for dbt.

Tentative Ruling

Application: Interim Compensation and Expense Reimbursement

Notice: LBR 9014-1(f)(2); no written opposition required

Disposition: Approved

Order: Prepared by applicant

Compensation approved: \$7,375.00

Costs approved: \$258.61

Aggregate fees and costs approved in this application: \$7,633.61

Retainer held: \$16,458.00

Amount to be paid as administrative expense: \$0

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by counsel for the debtor in possession in a Chapter 11 case and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on an interim basis. Such amounts shall be perfected, and may be adjusted, by a final application for compensation and expenses, which shall be filed prior to case closure. The moving party is authorized to draw on any retainer held.

5. [13-12358](#)-A-11 CENTRAL VALLEY SHORING, MOTION FOR COMPENSATION FOR
LKW-14 INC. LEONARD K. WELSH, DEFENDANTS
CENTRAL VALLEY SHORING, ATTORNEY(S)
INC./MV 6-25-14 [[242](#)]
LEONARD WELSH/Atty. for dbt.

Final Ruling

Application: Interim Compensation and Expense Reimbursement

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Approved

Order: Prepared by applicant

Compensation approved: \$19,352.50

Costs approved: \$499.94

Aggregate fees and costs approved in this application: \$19,852.44

Retainer held: \$0

Amount to be paid as administrative expense: \$19,852.44

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by counsel for the debtor in possession in a Chapter 11 case and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Reasonable

